

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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STEVEN COOPER,

Plaintiff,

v.

17-CV-01517

CITY OF NEW YORK, et al.,

Defendants.

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October 21, 2020
2:08 p.m.

Videoconference deposition of
DESMOND MORALES, taken by the plaintiff,
pursuant to order, reported remotely by
Jennie Siolidis, a Shorthand Reporter and
Notary Public of the State of New York.

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Morales

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with regard to that training?

A. No.

Q. Was this a class that you took at the academy?

A. When I became captain?

Q. Yes.

A. Yeah, there was a one-month training, but not necessarily so much geared toward this. Maybe there was a one-hour block in the whole month; that's about it.

Q. Okay. And what year did you go through that training?

A. I became a captain five years ago. It was October of 2015.

Q. Now turning back to March 20th, 2016, when you arrived at the 90th precinct, who is the first person involved with the incident that you spoke with?

A. Do you mean other members, or the people involved, the parties involved?

Q. Excluding people who may just have been at the 90th precinct that you would have spoken to, who was actually

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involved in the incident on the street did
you speak to first?

A. Mr. Cooper.

Q. And how long did you speak with
Mr. Cooper?

A. If I had to guess, approximately
10, 15 minutes.

Q. Did you take any notes at this
interview?

A. No.

Q. Did you see any injuries on
Mr. Cooper?

A. Not that I recall.

Q. Do you remember seeing him with a
black eye?

A. No.

Q. If you had seen him with a black
eye, would you have made any record like an
aided report?

A. I wouldn't have, but I would have
had one prepared by someone else.

Q. Do you remember the sum and
substance of the conversation you had with
Mr. Cooper?

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A. If I -- I just recall him saying he was punched.

Q. Did he say who punched him?

A. He said the lieutenant.

Q. Did you document that anywhere?

A. No, I didn't take any notes.

Q. Was anyone around when Mr. Cooper told you that the lieutenant had punched him?

A. No. I believe it was just him and I in the muster room of the precinct. That's where you first walk in where the police officers would have roll call, that open space. He was standing there.

Q. And if I understand you correctly, when you walked in, he was alone in this muster room?

A. Correct. He was yelling at somebody on the phone.

Q. Did you hear the substance of that phone call?

A. Not really, no. I wasn't paying attention.

Q. Was he in handcuffs?

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A. No.

Q. And at that point was it your understanding that he was under arrest?

A. No.

Q. Would he have been free to leave the precinct at that time?

A. Legally, yes.

Q. Did he ask to leave the precinct?

A. No.

Q. Did he ask for medical attention?

A. If I recall, the ambulance had already come and he refused before I got there.

Q. Did you see anyone from EMS who was still there at the 90th precinct when you arrived?

A. I don't remember. I don't recall.

Q. When EMS arrives at a precinct, is that recorded in the command log or a similar document?

A. Well, it would be recorded, if they're a prisoner, it would be on a medical treatment of prisoner form. Or if

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A. It's what you held up, right?

Q. Yes.

A. That was the UF49 prepared on the date in question.

Q. Okay.

Now, if I'm understanding your testimony correctly, you said that reading this helped you remember some of the things that Mr. Cooper said to you; is that right?

A. I believe so.

Q. Can you please point me to the portions of Exhibit 2 that you believe were provided to you by Mr. Cooper?

A. The third bullet four lines down, "Upon arrival, they were met by Mr. Steven Cooper, who stated he had been robbed by four male whites in a car."

Q. And you believe Mr. Cooper said this to you, rather than it being relayed to you by one of the other officers?

A. No, I believe he said that to the officers and that was -- that's kind of what got the wheels in motion for me to go there.

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I was under the impression that later, when I found out it was Lieutenant Jacobs and his group of people were assaulted and possibly robbed Mr. Cooper. So that sounds -- that's something I want to get there fast for.

Q. Understood.

I want to be a little bit more focused about my question, however. Is there anything else in Exhibit 2 that you believe reflects something that Mr. Cooper said to you, personally, rather than to another officer or someone else?

A. Just the part about being struck, being punched.

Q. Okay. And just so we're clear, that's the only part of the 10- to 15-minute conversation with Mr. Cooper in the muster room that you remember?

A. Yes. I mean that -- the thing that stands out is the thing that spells out a possible crime, not the small little nuances.

Q. This isn't a memory test,

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Captain. You know, I only want what you remember today.

A. All I remember.

Q. Exactly.

Now, besides the conversation in the muster room with Mr. Cooper, did you ever speak to Mr. Cooper again on March 20th, 2016 or March 21st, 2016?

A. No, never spoke to him ever again.

Q. Well, that's my next question.

To be clear, have you ever spoken to Mr. Cooper in any respect for any reason following the March 20th, 2016 conversation in the muster room?

A. No.

Q. After you spoke with Mr. Cooper, who did you speak to next?

A. I don't recall. It could have been Lieutenant Jacobs, it could have been the supervisor on the desk, it could have been Mr. Mona. It could have been any of them. I don't recall the order.

Q. Okay. Who is the desk

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A. Not offhand, it doesn't ring a bell.

Q. That's Vasilios' -- the name he uses.

A. Oh, okay.

Q. Did you speak with Sergeant Katrincic prior to the recorded interview?

A. It would have been -- it sounds appropriate for me to have, because I believe he was a patrol supervisor, but I don't recall conversations. I don't even know what he looks like. I can't even visualize the conversation.

Q. What about officer Schrell, did you have a conversation with her prior to the recorded interview?

A. Same answer. I could have. I don't recall.

Q. What about officer Horun?

A. Same thing. I could have. I don't recall.

Q. At any time prior to the recorded interviews did you tell Lieutenant Jacobs that Mr. Cooper had accused him of punching

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him?

A. I don't recall if I said that to him.

Q. Okay. Were you ever made aware of whether or not prior to the interviews Lieutenant Jacobs had been told that Mr. Cooper accused him of punching him?

MR. DeLUCA: Objection to form. You can answer.

A. I'd imagine so. He was accused of something, because he called his representation, his union, so he had to have been notified that there was an allegation against him. But I just don't know if -- who that was; if that was me, if that was the sergeant, if that was Borough Investigations. I don't recall who told him, Lieutenant Jacobs.

Q. Now, Exhibit 2 has a date on the top, right, of March 20th, 2016? Do you see that?

A. Yes.

Q. Was this actually prepared on March 20th, 2016?

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A. If it wasn't, it was prepared right after midnight.

Q. I will mention to you that the interview with Lieutenant Jacobs occurred after midnight, so would that mean that it was prepared on March 21st, 2016?

MR. DeLUCA: Objection to form.

You can answer that.

A. That would make sense. It had to have been after all the interviews were concluded.

Q. Would Exhibit 2 have been prepared on March 22nd, or later?

MR. DeLUCA: Objection to form.

You can answer that.

A. I'm going to be honest with you, anything's possible. But I doubt it went that far, because Internal Affairs would be looking for this, but I could not definitively say what date. I'd imagine it was right after midnight, or at some point after midnight.

Q. Is it your general practice to prepare these UF49s as close to the actual

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interviews as possible?

A. In a perfect world.

Q. Now, prior to the recorded interviews, did you discuss your investigation with someone from the borough investigation unit?

A. Repeat that. I'm sorry.

Q. At some point -- let me just do this a little easier. At some point someone from the borough investigation unit arrived at the 90 precinct, right?

A. Well, their unit, coincidentally, is upstairs. It's already in the building.

Q. So it wouldn't have taken them long to get there?

A. If they were working. It was a Sunday. They could have been on call and then came in maybe hours later.

Q. Well, stepping back for a second, do you know when the borough investigation unit arrived at the 90 precinct, whether they were coming from upstairs or from outside of the building?

A. I don't know the exact time, but

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I know it wasn't right away.

Q. Would that have been recorded on the command log?

A. No. That would be whenever they went for duty, they signed in.

Q. Did the borough investigation unit officers have memo books?

A. I don't believe so, because they're considered investigators. Only patrol officers and patrol sergeants carry them.

Q. Do they carry notebooks or some other way of recording information?

A. Yeah, an unofficial steno pad, something along that sort.

Q. Did you have a conversation with the borough investigation unit officers prior to beginning the recorded interviews?

A. Yes.

Q. Can you tell me the sum and substance of that conversation?

A. It was probably just the preliminary information that I received from speaking to Mr. Cooper, talking to

1 Morales 60

2 A. Yeah, I don't see it anywhere.

3 Q. Okay.

4 MR. RICKNER: Let's take five?

5 (Whereupon, a short recess was
6 taken.)

7 Q. Captain Morales, you good to go?

8 A. Yes.

9 Q. Okay. Previously we established
10 that Exhibit 2 does not include a statement
11 that Steven Cooper was assaulted by
12 Lieutenant Jacobs, right?

13 A. Yes.

14 Q. Why wasn't that information
15 included?

16 A. Because like we alluded to prior,
17 the 49 is done after the fact. And after
18 the investigation was complete interviewing
19 the witnesses and Mr. -- well, Mr. Cooper
20 initially and the witnesses, it was
21 determined that Lieutenant Jacobs did not
22 strike Mr. Cooper, and Mr. O'Connor
23 actually struck him.

24 Q. And how did you come to that
25 determination?

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A. That was the investigating entities and all their interviews of the witnesses and I guess their recorded interviews.

Q. I'd like you to turn to the second page, and it's the last sentence right above bullet 4 states, "A video canvas yielded negative results at this time."

A. Mm-hmm.

Q. How did you determine that a video canvas yielded negative results?

A. Well, in modern-day policing, everything is recorded by big brother. There's cameras almost everywhere. So it's pretty common procedure when almost anything happens, you ask the police officer, the sergeants, whoever is on the scene to canvas, looking for any possible video that may have recorded the incident.

Q. And who performed that investigation?

A. What do you mean by that investigation?

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Q. Well, if it's -- it says here a video canvas yielded negative results, right?

A. Yes.

Q. That would imply that a video canvas took place, right?

A. Correct, yes.

Q. Who did the video canvas?

A. I would not be able to tell you that. I have no idea.

Q. Before putting this statement into Exhibit 2, would you have spoken to at least one officer who stated to you, I did a video canvas?

MR. DeLUCA: Objection to form.

You can answer that.

A. Not necessarily in that context.

What could happen, or possibly happened was me stating to a lieutenant or -- well, there was no lieutenants working that day. Me stating to a sergeant, make sure you do a video canvas; make sure you check the vicinity to see if anything was recorded or captured this

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incident. And then later on when I inquired about the video camera, they said yeah, we checked and we didn't find anything. That's how it could have went.

Q. Okay. But to be clear, you would have spoken to somebody at some time prior to Exhibit 2 being finalized to determine whether or not the video canvas had been done by some member of service, right?

A. Correct.

Q. And whoever that was told you there were negative results?

A. Either told me, or indirectly told me.

Q. How would they indirectly tell you?

A. They would tell the borough investigations team that there were none, and then it would be put on the 49.

Q. Would the borough investigation unit have done their own canvas for video?

A. Possibly.

Q. Now I'd like to turn to bullet point No. 9. At the bottom, it states that

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one of the people who was notified was PO,
and the last name is Tsourovakas,
T-s-o-u-r-o-v-a-k-a-s. Do you see that?

A. Yes.

Q. And they are with DCPI; is that
right?

A. Yeah, according to the 49.

Q. What does DCPI handle?

A. It stands for Deputy Commissioner
of Public Information. That's -- they're
notified if they believe any incident is
possibly newsworthy.

Q. So is it fair to say they were
notified because the incident on March
20th, 2016 could be newsworthy?

A. Yes.

Q. What about this incident made it
newsworthy?

A. Well, two things. One, it
involved Mr. O'Connor who is a -- or was a
rap artist. And it also involved a member
of the service which, at times, is
newsworthy.

Q. So it would be correct to state

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that helps anyone at all. Can you please mark this, Miss Court Reporter as Exhibit 3?

(Whereupon, the supervisor's fitness for duty report with the Bates stamp D_00080 was marked as Exhibit 3 for identification as of this date by the Reporter.)

Q. Can you identify Exhibit 3 for the record?

A. Are you talking to me?

Q. Yes, please.

A. Oh okay. "Supervisor's fitness for duty report."

Q. And can you look at the bottom and tell me whether or not you signed it?

A. Which one? There's two.

Q. Oh, that's interesting. I see one page with a shield on the top and a Bates stamp on the bottom. Is there a second page?

A. The one that says D_00080 on the bottom or D0 --

Q. That's the one.

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A. Well, it's -- and then there's 00079. The sheets are actually the size of half a sheet of paper. Whoever scanned them, scanned them two together onto one sheet.

MR. RICKNER: Okay. I would then ask. The court reporter, and I think I may have actually attached this document to the wrong -- I think it was actually attached to Exhibit 2. So if you can carve off 79 and 80 and let's just mark them as one exhibit?

Q. Now, looking at those two pages Captain Morales, let's start with 79.

A. Okay.

Q. And I'll call it the first page of Exhibit 3, Bates stamp D79. Can you identify this page for the record?

A. Supervisor's fitness for duty report.

Q. And what is a supervisor's fitness for duty report?

A. These are prepared when there's

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an off-duty incident to basically document their demeanor, their -- if they're intoxicated, if they're combative, if they're cooperative. I guess, you know, to basically record their physical condition at the time of occurrence.

Q. And this is based on your personal observations?

A. Well, in the police department's procedure, they're actually done twice. They're done by the initial supervisor who first has the interaction with the subject; and then later on it's by the second supervisor, in this case the duty captain, to basically see the condition of the person, you know -- well, for two reasons. One, for a police officer, say, if they're intoxicated, it's on the observation of two independent supervisors.

Now, the second prong for this, the reason why they do that is many times the duty captain responds maybe an hour or an hour and-a-half later and the person sobered up, so it's documenting their

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physical condition when the incident occurred and then later on.

Q. Now, the page marked 79, that was filled out by Sergeant Katrincic; is that correct?

A. It's signed by him. It appears so.

Q. And is this a form that's filled out in the regular course of the NYPD's business when there's an incident involving a member of service?

A. When they're off duty, yes.

Q. And is it necessary to ensure that the information on this form is accurate?

A. Of course.

Q. Is this form used potentially in a disciplinary action?

A. Yes.

Q. Do officers receive training regarding ensuring that this form is filled out accurately?

A. Do they get training?

Q. Yeah.

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A. Not specifically for this report. I mean some supervisors can go their whole career never having to do it.

Q. Okay. And the second page of Exhibit 3 bears Bates number 80, was this filled out by you?

A. The bottom -- the pertinent boxes are. The top, that doesn't look like my handwriting.

Q. What about there's a line that says, "Supervisor's observation." Do you see that?

A. Yeah.

Q. It's about halfway down the page?

A. Yeah I see it.

Q. On the second page of Exhibit 3, is that area below the line that says, "supervisor's observation" your handwriting?

A. That is, yes.

Q. Now I'd like to go to the top. There's a section that says, "narrative description as provided by complainant." Do you see that?

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A. I see it.

Q. Now this appears to be blank. Is that fair to say?

A. Yes.

Q. Should it have been filled out?

A. No. This isn't -- the point of that would be if Mr. Cooper had some kind of accusation of Lieutenant Thomas's fitness for duty, like if he claimed he was drunk, if he claimed he was intoxicated, just an accusation of a crime or something like that wouldn't go on there.

Q. Now, going to the bottom half, there are a series of check marks; is that correct?

A. Yes.

Q. Now, while filling out this form, are you supposed to check off any description that's applicable to the officer that's being evaluated?

A. Correct, yes.

Q. And, for example, there's a section odor of alcohol on breath and it says, "None."

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A. Yes, correct.

Q. Then it goes down to the eyes, it says, "apparently normal," for example?

A. Yes.

Q. And there's a section that says, "Member's armed status." Do you see that?

A. Yes.

Q. Neither armed nor unarmed are checked off; is that correct?

A. Yeah, I see that. And then the next box, that was probably an oversight.

Q. Okay. So this statement that he was armed or unarmed should have been filled out, but was not?

A. Correct.

Q. And what about underneath it, the "fit for duty or unfit for duty?"

A. That was an oversight that should have been, "fit for duty."

Q. Was Lieutenant Jacobs armed?

A. No, he wasn't.

Q. How did you determine that?

A. Well, when that happens, an off-duty incident, you ask them.